

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REBECCA T. SHUMYE,

Plaintiff,

v.

SAMUEL D. FELLEKE,

Defendant

No. C-06-3322 MMC

**ORDER DENYING PLAINTIFF'S  
APPLICATION FOR CERTIFICATE OF  
APPEALABILITY**

The Court is in receipt of plaintiff's "Application for Certificate of Appealability," filed April 21, 2008, by which plaintiff seeks an order certifying the Court's<sup>1</sup> April 4, 2008 order for interlocutory appeal. Having read and considered the application, the Court rules as follows.

On April 4, 2008, the Court filed an "Order: (1) Granting in Part and Denying in Part Defendant's Motion for Summary Judgment [and] (2) Denying Plaintiff's Motion for Summary Judgment." On April 8, 2008, plaintiff filed a "Notice of Appeal" from said order, as well as a "Petition for Review" of said order;<sup>2</sup> concurrent therewith, plaintiff filed an application to proceed in forma pauperis on appeal. On April 14, 2008, the Court denied said application on the ground plaintiff had appealed from a non-appealable order.

<sup>1</sup>The matter was reassigned to the undersigned on April 7, 2008.

<sup>2</sup>The Ninth Circuit has docketed the matter as 08-15869.

1 Thereafter, plaintiff filed the instant application, by which she requests the Court certify the  
2 April 4, 2008 order for interlocutory appeal, pursuant to 28 U.S.C. § 1292(b).

3 A district court may certify for appeal an interlocutory order that (1) "involves a  
4 controlling question of law," (2) where "there is substantial ground for difference of opinion"  
5 as to such question, (3) and where "an immediate appeal from the order may materially  
6 advance the ultimate termination of the litigation." See 28 U.S.C. § 1292(b). All three  
7 requirements must be met. See In re Cement Litigation, 673 F. 2d 1020, 1027 (9th Cir.  
8 1981). Here, the Court finds plaintiff has not made an adequate showing as to any of the  
9 requirements; mere disagreement with a court ruling is insufficient.


10 Moreover, as the Ninth Circuit has held, § 1292(b) is "to be used only in exceptional  
11 situations in which allowing an interlocutory appeal would avoid protracted and expensive  
12 litigation." See id. at 1026. Plaintiff has failed to show this is such a case.

13 Accordingly, plaintiff's application for an order certifying the Court's April 4, 2008  
14 Order for interlocutory appeal is hereby DENIED.

15 The Clerk is directed to serve a copy of this order on the Ninth Circuit Court of  
16 Appeals.

17 **IT IS SO ORDERED.**

18  
19 Dated: April 22, 2008

  
MAXINE M. CHESNEY  
United States District Judge